

NO. 4570

IN THE ⁵

**United States
Circuit Court of Appeals
For the Ninth District**

W. G. CRITZER,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of the Record

Upon Writ of Error from the United States District Court for the District of Idaho,
Northern Division

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Upon Writ of Error from the United States District Court for the District of Idaho,
Northern Division

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

JOSEPH J. LAVIN,
HERMAN & MUNTER,
Spokane, Washington.
Attorneys for Plaintiff in Error.

E. G. DAVIS, U. S. District Attorney,
J. F. AILSHIE, Jr.,
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Assistant U. S. District Attorneys.
Boise, Idaho,
Attorneys for Defendant in Error.

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IN THE DISTRICT COURT OF THE UNITED
STATES, IN AND FOR THE DISTRICT
OF IDAHO, NORTHERN DIVISION

UNITED STATES OF AMERICA,

vs.

W. G. CRITZER and
RAY W. (JOHN DOE) HAYDEN,

Defendants.

No. 2019.

INFORMATION.

E. G. Davis, United States Attorney for the District of Idaho, who for the United States in this behalf prosecutes in his own proper person, comes into Court on this 21st day of November, 1923, and with leave of the Court first had and obtained, upon his official oath gives the Court here to understand and be informed as follows:

COUNT ONE.

(Possession)

That W. G. Critzer and John Doe Hayden, late of the City of Spokane, County of Spokane, State of Washington, heretofore, to wit, on or about the 7TH DAY OF NOVEMBER, 1923, at a point near Deep Creek, in the County of Boundary, State of Idaho, in the Northern Division of the District of Idaho and within the jurisdiction of this Court, did, then and there, wilfully, knowingly and un-

lawfully, have in their possession certain intoxicating liquor containing more than one-half of one per cent alcohol, to wit, 23 sacks of Canadian Bonded Liquor, the same being designed, intended and fit for use as a beverage, the possession of same being then and there prohibited and unlawful, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT TWO.

(Transportation)

That W. G. Critzer and John Doe Hayden, late of the City of Spokane, County of Spokane, State of Washington, heretofore, to wit, on or about the 7TH DAY OF NOVEMBER, 1923, from a place to informant unknown to a point near Deep Creek, in the County of Boundary, State of Idaho, in the Northern Division of the District of Idaho and within the jurisdiction of this Court, did, then and there, wilfully, knowingly and unlawfully transport a quantity of intoxicating liquor containing more than one-half of one per cent. of alcohol, to wit, 23 sacks of Canadian Bonded Liquor, the transportation of same being then and there prohibited and unlawful, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT THREE.

(Libel)

The W. G. Critzer and John Doe Hayden, late of the City of Spokane, County of Spokane, State of Washington, heretofore, to wit, on or about the 7TH DAY OF NOVEMBER, 1923, from a place to informant unknown to a point near Deep Creek, in the County of Boundary, State of Idaho, in the Northern Division of the District of Idaho, and within the jurisdiction of this Court, did, then and there, wilfully, knowingly and unlawfully transport intoxicating liquor, to wit, 23 sacks of Canadian Bonded Liquor, in one Hudson Five Passenger Speedster automobile, 1923 Model, Engine No. 164728, Washington 1923 License No. 16267, the transportation of same being then and there prohibited and unlawful, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

E. G. DAVIS,

United States Attorney for
the District of Idaho.

United States of America)
District of Idaho)ss.
Northern Division)

William H. Langroise, being first duly sworn, on his oath deposes and says: That he is a duly appointed, qualified and acting Assistant United States Attorney for the District of Idaho, and that he makes this verifica-

tion as such; that he has read the above and foregoing information, knows the contents thereof, and that the facts and things therein stated are true as he verily believes.

WILLIAM H. LANGROISE,

Subscribed and sworn to before me this 21st day of November, 1923.

W. D. McREYNOLDS,
Clerk of the U. S. District
Court.

(SEAL)

Leave is hereby granted to file the foregoing Information.

Let process issue and bonds be fixed in the sum of \$500.00.

FRANK S. DIETRICH,
District Judge.

Endorsed, Filed, Nov. 23, 1923.

W. D. McREYNOLDS, Clerk.

MINUTE ENTRY—RECORD OF TRIAL

(Title of Court and Cause)

This cause came on for trial before the Court and a jury, W. H. Langroise, Assistant District Attorney, appearing for the United States, the defendant, W. G. Critzer and Ray W. Hayden being present with their counsel, Joe Lavin, Esq. The Clerk, under directions of the court, proceeded to draw from the jury box the names of twelve persons, one at a time, written on separate slips of paper, to secure a jury. Louis Sunkel whose name was so drawn, was excused for cause. Ralph Fisher whose name was also drawn, was excused on the plaintiff's peremptory challenge. Following

are the names of the persons whose names were drawn from the jury box, who were sworn and examined on voir dire, found duly qualified and who were sworn to well and truly try said cause and a true verdict render, to-wit:

Fred W. Graves, M. A. Peck, O. W. Brooks, R. J. Newington, B. C. Woolridge, W. B. Turnbow, J. C. Waddell, Clarence Peck, C. B. Foot, J. H. Harold, A. C. Morbeck and John B. Steffes.

The information was read to the jury by the Assistant District Attorney who informed them of the defendants' plea entered thereto, whereupon, C. R. Knight, W. F. Dunning, W. C. Welch, John J. Cramway, Geo. R. Hesser, Teresa Hacket, Emma Simmons, E. E. Crandall, Dan Dunning, Clarence Marcey, A. C. Henry were sworn and examined and other evidence was introduced and here the plaintiff rests.

Frank Keenan, Ray W. Hayden, W. G. Critzer and Harry Hayden were sworn and examined on the part of the defendants and here the defendants rest. On rebuttal A. C. Henry was recalled and further examined and here both sides close.

The cause was argued before the jury by counsel for the respective parties, after which the court instructed the jury and placed them in charge of Ludwig Roper, a bailiff duly sworn, and they retired to consider of their verdict.

On the same day the jury returned into court, the defendants and counsel being present, whereupon, the jury presented their written verdict, which was in the words following:

(Title of Court and Cause)

VERDICT NO. 2019.

“We, the jury in the above entitled cause, find the defendant W. G. Critzer, guilty on the first count, guilty on the second count, and guilty on the third count, as charged in the information.

We find the defendant Ray W. Hayden, not guilty on the first count, not guilty on the second count, and not guilty on the third count as charged in the information.

J. C. WADDELL, Foreman.”

The verdict was recorded in the present of the jury, and then read to them, and they each confirmed the same.

IN THE DISTRICT COURT OF THE UNITED
STATES, IN AND FOR THE STATE OF
IDAHO, NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff.

vs.

W. G. CRITZER and JOHN DOE
(RAY W.) HAYDEN,

Defendants.

No. 2019.

BILL OF EXCEPTIONS

The said cause having come on regularly for trial, the following evidence was offered:

C. R. KNIGHT, a witness called on behalf of the plaintiff, having been first duly sworn on oath, testified as follows:

That he was a deputy sheriff, residing at Bonners Ferry, Idaho; that on the evening of November 7, 1923, in company with Sheriff Dunning and Deputy Sheriff Welch, he drove out to a point known as Deep Creek, having had a report that a couple of cars were coming through; that they placed obstacles across the road, and that about half past four on the morning of the 8th, three cars approached; that one jumped the barricade and proceeded westerly; that the second car went over the barricade and proceeded westerly, and that the third car turned easterly; that he took

after the one which went east, and being unable to locate the car, returned to the point where he had erected the barrier, and that at a point about a half mile west of where the barrier has been erected, he found a Hudson automobile standing in the roadway, stuck in the mud, with twenty-three cases of whiskey piled along the side of the car, and that a couple of cases had slid down against the running board of the car; that the car was in the middle of the road in a swampy place, and that it would not have been possible for another car to have passed there when the car in question was in the roadway; that the car was a Hudson car, 1923, touring; that a drivers license was attached to a little card on the switch with the name of W. G. Critzer upon it; that he saw the second car, the Hudson car referred to, stop at the point in the roadway after going over the barrier, and that no other cars had passed that point. Moravia is about a mile and a quarter by road from this point, and the closest post office.

W. F. DUNNING, called on behalf of the plaintiff, having been first duly sworn on oath, testified as follows:

That he is sheriff of Bonner County, residing at Bonners Ferry, Idaho; that on the evening of November 7, 1923, in company with the deputies Knight and Welch, he went to a point near Deep Creek; that a barrier was erected across the roadway; that the next morning between three and

four o'clock, three cars came from the north; that the first car broke through the barrier, and the second car did the same, and that the third car turned and went easterly; that the second car stopped a short distance west of the barrier on the roadway. Followed third car east about a mile and then returned to where car was stuck in mud; that after going down to the car which was stuck in the mud, he found twenty-three sacks of Canadian whiskey piled right outside of the car, and two or three of the sacks had slipped down off of the running board and were resting against the car; that the car in question bore a Washington license and a plate on the steering wheel had the name of W. G. Critzer on it; that on account of the position of the car and the swamp no other car could have passed; that he employed a team to haul the car and the whiskey to Bonners Ferry, and turned the liquor over to Federal Prohibition Agent Hesser, the liquor being in substantially the same condition as when found, and turned it over to the federal agent; that it was dark at the time.

W. C. WELSH, a witness called on behalf of the plaintiff, having been first duly sworn on oath, testified as follows:

That he is Deputy Sheriff of Boundary County, residing at Bonners Ferry, Idaho; that on the evening of November 7, 1923, in company with Sheriff Dunning and Deputy Sheriff Knight, he went to a point near Deep Creek and placed a barrier across

the public highway; that about four thirty o'clock in the morning, three booze cars came along; that the condition of the roadway beyond the point where the barriers were placed was a cedar swamp and the road was narrow, not over eight or nine feet wide; that two cars broke through the barrier, and the other car turned and went east; that they turned around and followed the car headed east, and being unable to find it, returned to a point a short distance west of the barrier where they found a Hudson car stuck in the mud and twenty-three cases of liquor, piled along the side of the car; that the car and contents was taken to Bonners Ferry and turned over to the federal officer.

JOHN J. CONWAY, a witness called on behalf of the plaintiff, having been first duly sworn on oath, testified as follows:

That he resides near Deep Creek; that on the morning of November 8, Sheriff Dunning came to his place about five thirty and employed him and his team to assist him in pulling an automobile that was in the roadway; that the road was soft and springy and some logs were along side of the road, and the car seemed to have jumped off and got caught on the log.

GEORGE R. HESSER, a witness called on behalf of the plaintiff, having been first duly sworn on oath, testified as follows:

That he is Federal Prohibition Agent, stationed at Sandpoint; that on November 12, 1923, a Hudson car and intoxicating liquor was turned over to him, and by him, placed in storage at Coeur d'Alene, Idaho; that the car bore a Washington license in a leather card case, and bore the name of W. G. Critzer; that he examined the contents of the sacks taken at the time and that they contained intoxicating liquor capable of being used as a beverage.

The five sacks of liquor received in evidence without objection and admitted to be intoxicating liquor. Defendants also admitted that car in question belonged to defendant Critzer and is car referred to and correctly described in count three of the information.

THERESA HATCHETT, a witness called on behalf of the plaintiff, having been first duly sworn on oath testified as follows:

That she is post mistress at Moravia, Idaho; that on the morning of November 8, 1923, a gentleman called at her house and asked if he might use the phone; that she could not recognize the man; whereupon, the following occurred:

BY MR. LANGROISE:

Q. I will ask you to look and see if you could recognize—

MR. LAVIN: I object to that as leading and suggestive.

COURT: You may see whether the man is in the court room or not.

A. No, I cannot place him at this time. That the man wanted to call up Spokane and wanted Main 606; that he tried to get the call through and couldn't, and that she called for him and central asked what the name was and she asked him and he said it was Hayden; that it was about nine or half past nine in the morning; that the man said he was cold and that he had been wading through the wet grass; that there was no one else present at the time except her mother, Emma Simmons; that she did not hear any part of the conversation except putting the call through; that central asked who wanted the call put through and she asked him and he said Hayden; that she kept no record of the transaction. The witness further testified that all she did was to put in the telephone call. That she then went about her work and did not hear any conversation.

EMMA SIMMONS, a witness called on behalf of the plaintiff, having been first duly sworn on oath, testified as follows:

That she resides at Moravia, Idaho with her daughter Theresa Hatchett, at the post office and store; that on November 8, 1923, a man called at the post office and store. The following occurred:

BY MR. LANGROISE:

Q. Would you be able to recognize that man at this time?

A. I couldn't say that I would.

Q. I will ask you to look about here in the court room and see if you can see the man—if you are able to recognize the man that came there.

A. No, I don't see him.

Q. You are not able to recognize the man at this time?

A. No.

That the man wanted to know if he could telephone, and that he called Main 606 at Spokane, and gave his name as Hayden; that she heard what he had to say over the phone, and he said: "Is this Louie?" and he said, "Tell Joe—I have lost everything—Will be in on 43"; and he further said, "Look out for Grant"; his clothes were damp and he spoke about coming through wet grass and weeds.

E. E. CRANDALL, a witness called on behalf of the plaintiff, having been first duly sworn on oath, testified as follows:

That he was employed as a special agent of the telephone company; that he had access to and was in custody of records of the telephone company; that application for a license for Main 606 at Spokane was made by the Elite Cigar Store, S. 7 Stevens Street, Spokane, signed by R. J. Critzer; and that on the 7th day of November, 1923,

the Elite Cigar Store at S. 7 Stevens Street at Spokane, had for its telephone number, Main 606.

D. E. DUNNING, a witness called on behalf of the plaintiff, having been first duly sworn on oath, testified as follows:

That he is a city license inspector and secretary to the Commissioner of Public Safety at Spokane, Washington; that on April 25, 1923, application for soft drink license, for S. 7 Stevens Street, Spokane, was made by W. G. Critzer, and that it was signed W. G. Critzer by R. J. Critzer, and that a license was thereafter issued on May 1, 1923 to W. G. Critzer to conduct a soft drink business at S 7 Stevens Street, Spokane, Washington; that he had occasion to visit the place of business prior to and up to November 8, 1923, and that Grant Critzer was in charge of the place; that one of the brothers of W. G. Critzer is named Louie.

CLARENCE MARCY, a witness called on behalf of the plaintiff, having been first duly sworn on oath, testified as follows:

That he was police officer at Spokane, Washington; that the Elite Cigar Store is located at S. 7 Stevens Street, Spokane.

A. C. HENRY, a witness called on behalf of the plaintiff, having been first duly sworn on oath, testified as follows:

That he is prosecuting attorney of Boundary County, and was such on November 8, 1923; that

he was acquainted with a man named Hayden, he did not know his first name. The following occurred:

BY MR. LANGROISE:

Q. Can you identify the Hayden you are acquainted with?

A. I can.

Q. Can you point him out?

A. The first one there (pointing at Critzer). That he saw the gentlemen referred to as the defendants together in a room at the Commercial Hotel in Bonners Ferry some time in November; that a man named Jones took him to the hotel, and that Jones said, "This man is in trouble"; that he looked over to him and said, "What are you in trouble about?" and he said, "I lost my car and I lost my booze down here at Deep Creek." On cross examination, the witness testified that he was not sure that he had ever seen the defendant Hayden before, and that he would not swear positively that he was the man, but he thought he was the man with Critzer at the Commercial Hotel; that he would swear positively as to the other man (Critzler).

BY MR. LAVIN:

Q. "Now, with reference to this gentleman here (indicating Critzer) did you ever see him before?"

A. Yes, sir.

Q. What did you say his name was?

A. I was introduced to him as Hayden, I don't know what his name is.

Q. He told you his name was Critzer, didn't he?

A. No sir.

Q. And that he was after a car seized up there by the officers.

A. He didn't tell me anything about the car that was seized.

Q. He told you he wasn't in the car at that time?

A. He did not.

Q. And demanded the return of the car?

A. He did not.

Q. And didn't you tell him the car ought to be returned to him?

A. I did not.

Q. Later it was turned over to the Federal officers?

A. I don't know about that.

No other evidence having been offered in behalf of the Government, counsel for the defendants made the following motion:

MR. LAVIN: At this time, the Government having rested, the defendant Critzer challenges the sufficiency of the testimony and moves the Court to dismiss the three Counts of the Indictment as to the defendant Critzer, or to instruct the jury to return a verdict of Not Guilty on each and all of the counts for

the reason the evidence is not sufficient to justify submitting the case to the jury. I make the same motion with reference to the defendant Hayden in all particulars.

Thereupon, the defendants offered the following evidence:

FRANK KEENAN, a witness called on behalf of the defendants, having been first duly sworn on oath, testified as follows:

That he is a police officer in the City of Spokane, having been such for fourteen years; that he is acquainted with W. G. Critzer, one of the defendants. The following occurred:

BY MR. LAVIN:

Q. Are you acquainted with W. G. Critzer, one of the defendants in this case?

A. Yes sir.

Q. Did you have occasion to see him on the morning of the 8th of November, 1923?

MR. LANGROISE: We will admit that Mr. Critzer was in Spokane on that day.

MR. LAVIN: All right, on the morning of the 8th of November?

MR. LANGROISE: Yes.

MR. LAVIN: Early morning?

MR. LANGROISE: Yes.

MR. LAVIN: You don't contend that he was up at Bonners Ferry that day?

MR. LANGROISE: No sir.

RAY HAYDEN, one of the defendants, called

as witness for the defendants, having been first duly sworn on oath, testified as follows:

That he was living at Spokane on November 7, 1923, at the American Hotel, where he had been living from six to nine months prior to said date; that he was acquainted with W. G. Critzer, having met him before the trial of the case; that he had never operated the Hudson automobile referred to; that he was not driving said automobile on November 7 or November 8 in the vicinity of Moravia, or that he had never ridden or driven it before that time; that he had never been in the town of Bonners Ferry; that he had never seen the witness Henry who testified for the Government; that he had never talked to him at Bonners Ferry, and that he never was in Bonners Ferry with Mr. Critzer. On cross-examination, he testified that he was in Spokane on November 7, at the American Hotel, and that he was arrested two or three weeks after the time the car was confiscated near Bonners Ferry; that he followed the occupation of salesman, selling automobiles and trucks, but that he had not sold any automobiles or trucks for eighteen months, our particular trucks, a big truck, I remember, a 5½ ton truck, I sold to City of Spokane; that he worked for a time selling tires, but had not sold any for 18 months, and for a time as cigar clerk in the Court Cigar Store; and that he was not employed in November, and had not worked since June, 1923, and was laid

off on account of bad health; that a few days after the automobile in question was seized, he heard it talked of around Spokane; that he lived at the American Hotel all of the time and slept at the hotel on the night of November 7, 1923; that he never was at Moravia; that he knew W. G. Critzer prior to November 7, 1923, slightly.

W. G. CRITZER, one of the defendants, called as witness in behalf of the defendants, having been first duly sworn on oath, testified as follows:

That he has two brothers, named R. J. Critzer and L. E. Critzer; that R. J. Critzer, who made application for the license for the Elite Cigar Store at Spokane, is a brother of the witness; that he operated the Elite Cigar Store at Spokane until the first of July, when he went to California, and came back and never operated it afterwards that he came back on the 18th of August, 1923; that he is acquainted with his co-defendant, Ray Hayden, and that on November 7th or 8th, he did not lend the car in question to Hayden and did not permit him to drive it and never knew of him having driven that car; that he first learned that the car had been seized about ten o'clock in the morning of November 8, the information being given to him by Frank Keenan, detective in the City of Spokane; that he was not out of Spokane at any time on the 7th or the morning of the 8th; that he was not driving the automobile in question in the vicinity of Bonners Ferry, and had not driven

it there; that after he had been informed that his car had been seized, he went to the John Doran Company of Spokane who had a mortgage on the car, and that in company with the book keeper of that firm, he went to Bonners Ferry, Idaho and talked with Mr. Henry, Prosecuting Attorney; that Ray Hayden was not with him at that time, and that he had never seen Mr. Henry before that time; That he knew Mr. Henry was Prosecuting Attorney; that he told Mr. Henry that the car had been seized, and that the John Doran Company had a mortgage, and that Henry asked him if he brought the papers with him, and that he said he would go back to Spokane and bring them up; that he did not tell Henry that he had lost his car and booze, and that he did not know that was being driven with intoxicating liquor at that time. On cross-examination, he testified that a man by the name of Martin B. Ackerman, a man whom he had met in Montana in 1917 when they were working in the woods was driving the car at the time in question; that he had known Ackerman for some time, but that he had never had any business relations with him; that Ackerman had been in Spokane for about a month and roomed right around the corner from his place, that Ackerman wasn't doing anything, would see him nearly every night—used to ride home with me from uptown. That Ackerman told him that he was going hunt-

ing and that the witness let him take the car on the morning of the 7th.

Q. Where was Ackerman living at that time?

A. I am pretty sure he was living at the Montana Hotel.

Q. Don't you know?

A. Well he moved out of there—I don't know whether he was living there or at the Empire—he used to ride to the garage with me then he went home—pretty sure it was the Montana Hotel.

Q. He was living there at that time?

A. Yes.

Q. And he never returned afterwards?

A. I never saw him.

Q. You never made inquiries as to where he was?

A. I tried to find out—there wasn't many people knew him around there.

Q. What was the other place you named?

A. Empire hotel.

Q. You know he stayed at those places?

A. He stayed at the Empire first and the Montana last.

Q. You made inquiries right after this?

A. Yes.

Q. Did he say how long he wanted the car?

A. Yes, he said he would be back the next day sometime.

That he did not know that his automobile was being used for hauling whiskey; that he had driven

the car eight thousand miles during the four months that he owned it, but that he had driven it to California and back; that Ackerman had never communicated with him after the car had been seized; me and my wife had the Big Bend Hotel; that he owned the Elite Cigar Store at Spokane during the year 1923; that he opened up for business in April and left about the middle of June for California and came back about August 20; that he sold his interest in the cigar store—a one-half interest; that the telephone number of the store was Main 606; that his brothers looked after the place of business. Was in taxi business from spring 1919, to 1921, not before or since. Sold cars year when I had chance, not a salesman but worked on commission.

HARRY HAYDEN, a witness called on behalf of the defendant, having been first duly sworn on oath, testified as follows:

That he is a brother of Ray Hayden, one of the defendants; that his brother was living at the American Hotel at Spokane during the month of November, 1923, and had been living there for about nine months; that his brother, Ray Hayden, defendant, was around Spokane during the early part of November about the time he was arrested, but that he did not know where he was on November 7 or 8.

W. G. CRITZER, recalled by the defendant, testified as follows:

That a Mr. Bray, bookkeeper for John Doran Company at Spokane, was with him at Bonners Ferry; that he returned to Bonners Ferry; talked with Henry and showed him papers; and that the other man was a Mr. Jones from Sandpoint.

A. C. Henry was recalled on rebuttal and testified as follows:

That Critzer never did come to his office, but that a man representing some automobile concern in Spokane came alone to his office a few days after the conversation in the hotel with Critzer, Jones and another man. That there is no man by the name of Larson running a pool hall in Bonners Ferry. That the other man that was with Critzer in the hotel resembles the man in the center (being defendant Hayden), but I would not be positive.

CROSS EXAMINATION:

That he was prosecuting attorney of Boundary County, and that he had not had the defendant Critzer arrested; that the case had been turned over to the U. S. Authorities and that relieved him.

Thereupon, respective counsel argued to the jury, after which argument, the court instructed the jury, and in addition to general instructions, gave an instruction in substantially the following language:

That the jury must find from the evidence, beyond a reasonable doubt, before they can find the defendant Critzer guilty, that some relationship existed between the defendant

Critzer and the defendant Hayden or other driver of the car; that either Hayden, or some other driver, was employed by Critzer for or on a contingent basis for transporting said intoxicating liquor, or had joint interest in the transaction, or the defendant Critzer employed him to transport the intoxicating liquor in question, or that Critzer had knowledge that said liquor was to be transported in said car and furnished his car for the unlawful enterprise, or that he was aided and assisted by the defendant Hayden, or such other driver, in transporting said intoxicating liquor; and that unless the jury find such facts to exist from the evidence, beyond a reasonable doubt, then they must find the defendant Critzer not guilty.

Thereafter, the jury retired to consider their verdict, and returned a verdict finding the defendant Ray Hayden not guilty on the three counts of the Indictment, and finding the defendant W. G. Critzer guilty on the three counts of the Indictment.

Duly settled and allowed as defendant Critzer's Bill of Exceptions.

FRANK S. DIETRICH,
Judge.

February 28, 1925.

Endorsed:

Lodged January 16, 1925.

Filed February 28, 1925.

W. D. McREYNOLDS, Clerk

By M. FRANKLIN, Deputy.

(Title of Court and Cause)

VERDICT.

We, the jury in the above entitled cause, find the defendant W. G. Critzer Guilty on the first count, Guilty on the second count, and Guilty on the third count as charged in the information.

We find the defendant Ray W. Hayden, Not Guilty on the first count, Not Guilty on the second count and Not Guilty on the third count as charged in the information.

J. C. WADDELL, Foreman.

Endorsed, Filed December 6, 1924.

W. D. McReynolds, Clerk.

(Title of Court and Cause)

MOTION IN ARREST OF JUDGMENT.

Comes now the defendant, W. G. Critzer, and moves the Court for an order vacating, setting aside, the verdict of the jury, heretofore rendered and entered herein, finding the defendant guilty upon counts 1, 2, and 3 of the Information herein, and to grant a judgment of dismissal, and to set aside said verdict upon the ground and for the reasons:

I.

That said verdict is inconsistent with the facts; inconsistent with the evidence adduced in the trial

of said cause, and inconsistent with the Court's instructions, given at the time of trial.

II.

That under the theory of the government, as alleged in the Information, and as announced during the course of trial, and as submitted to the jury under instruction of the Court, a verdict finding the defendant, Ray Hayden, not guilty on all of the counts of said indictment is the same as the verdict finding the defendant Critzer not guilty.

III.

That the cause having been submitted to the jury upon the theory that Hayden was actually driving the car in question at the time alleged, and was conveying intoxicating liquor from some point in Canada to some point in the United States, and the car became stuck or lodged and the intoxicating liquor was taken therefrom, and the Government having admitted that the defendant Critzer was not present in person at the time, but was in Spokane, and the Court having instructed the jury that the jury could not convict the defendant Critzer even though they found he was the owner of the car in question, but that they might consider the ownership of the car as bearing upon the question of whether or not he was participating in the transportation of said intoxicating liquor, having found that the defendant Hayden was not in possession of the said intoxicating liquor alleged,

and was not transporting such intoxicating liquor in the car which it was conceded belonged to the defendant Critzer, a verdict finding the defendant Hayden not guilty is inconsistent with, absurd, and repugnant to the verdict of the jury finding he defendant Critzer guilty as charged.

IV.

Said verdict is further inconsistent in that the court instructed the jury substantially that the jury must find from the evidence, beyond a reasonable doubt, before they can find the defendant Critzer guilty, that some relationship existed between the defendant Critzer and the defendant Hayden; that either Hayden was employed by Critzer, for some consideration for or on a contingent basis, for the transporting of the said intoxicating liquor; that the defendant Critzer and the defendant Hayden had joint partnership in the transaction, or that the defendant Critzer employed the defendant Hayden to transport the intoxicating liquor in question, or that Critzer had knowledge that the said liquor was to be transported in the car, or that he aided and assisted in the transportation of the said intoxicating liquor, and unless the jury find such fact or facts to exist from the evidence, beyond a reasonable doubt, they must find the defendant Critzer not guilty.

V.

The District Attorney, during the reception of the evidence when the defendant Critzer offered evidence to show he was not present at the time of the alleged commission of the offense, and during the argument, conceded that Critzer was not personally present at the time and place alleged, but that he was in Spokane, Washington.

VI.

The jury, having found by its verdict that the defendant Hayden was not guilty of the possession or transportation of liquor referred to in counts 1 and 2 of the Information, and that he did not possess or transport intoxicating liquor in the car in question, admitted to be the property of the defendant Critzer, then the defendant Critzer did not aid or assist the defendant Hayden; could not have had any agreement or arrangement with reference to the possession or transporting of any intoxicating liquor (the jury having found Hayden did not possess or transport any intoxicating liquor); that Hayden was not employed by Critzer for a consideration, or otherwise, for the possession or transportation of the intoxicating liquor referred to in the Information, and Critzer could not have knowledge that such intoxicating liquor was possessed or transported by Hayden in his car, which the jury found Hayden did not possess or transport, and a verdict finding Critzer guilty and the defendant Hayden not guilty is inconsistent,

absurd, repugnant to and contrary to the law and the Court's instructions, and not justified by the evidence and contrary to the evidence, the court's instructions, and the theory of the Government, as alleged in the information, and as stated and argued by the District Attorney.

VII.

That before the defendant Critzer could be found guilty, the jury was bound to find the defendant Hayden guilty of possession and transporting intoxicating liquor, as in the Information, in the automobile belonging to the defendant Critzer.

This Motion is made and based upon the files and proceedings herein, upon the reporter's notes and the transcript of evidence, the arguments of counsel, and the instructions of the court.

And, in the alternative, and in the event that said Motion should be denied, and not otherwise, then the defendant Critzer moves the court to vacate and set aside the verdict of the jury, and to grant a New Trial for the defendant Critzer upon the ground and for the reason:

I.

Insufficiency of the evidence to justify the verdict of the jury, and that the same is against the law and the facts.

II.

Errors in law occurring at the time of the trial and accepted to at the time by the defendant Critzer.

Dated at Spokane, Washington, this 8th day of December, A. D., 1924.

JOSEPH J. LAVIN,
Attorney for Defendant,
W. G. Critzer.

(Service acknowledged)

Endorsed, Filed December 9, 1924.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause)

ORDER.

This matter coming on for hearing upon the Motion of the defendant W. G. Critzer, in arrest of judgment, and for judgment notwithstanding the verdict of the jury, and for a New Trial, and after hearing the argument of counsel, and the court being fully advised in the law and the premises.

IT IS ORDERED, that said Motions, and each and all thereof, be, and the same are hereby overruled, to which ruling the defendant Critzer excepts and exception is allowed.

Done in open court this 10th day of December,
A. D., 1924.

FRANK S. DIETRICH

Judge.

Endorsed, Filed Dec. 11, 1924.

W. D. McREYNOLDS, Clerk.

JUDGMENT.

At a stated term of the District Court of the United States for the District of Idaho, Northern Division, held in Coeur d'Alene, within said District, on December 9, 1924, the following proceedings, among others, were had, to-wit:

Present: HONORABLE FRANK S. DIETRICH,
Judge.

(Title of Court and Cause)

The defendant was duly informed by the Court of the nature of the information filed against him for the crime of Violation of the National Prohibition Act committed on the 7th day of November, 1923, of his arraignment and plea of not guilty on the 26th day of November, 1923, his trial and the verdict of the jury on the 6th day of December, 1924, "Guilty as charged on the first three counts of the information."

The defendant was then asked by the Court if he had any legal cause to show why judgment

should not be pronounced against him, to which he replied that he had none, and no sufficient cause being shown or appearing to the Court,

Now, therefore, the said defendant having been convicted of the crime of Violation of the National Prohibition Act,

It is hereby considered and adjudged that the said defendant W. G. Critzer do pay a fine of \$250.00 and \$500.00 and be confined in the Jail of Kootenai County, Idaho, until such fine is paid. Stay of execution of this judgment was granted for one day. Thirty days were allowed the defendant for filing Bill of Exceptions herein.

(Title of Court and Cause)

ORDER EXTENDING TIME FOR FILING BILL
OF EXCEPTIONS.

Upon application of the defendant, W. G. Critzer, one of the defendants, for an order extending the time for the filing of a proposed Bill of Exceptions herein, and the court being fully advised,

IT IS ORDERED that the defendant W. G. Critzer be, and he is hereby given to and until January 9, 1925, within which to prepare, serve and file a proposed Bill of Exceptions herein.

Done in open court this 10th day of December,
A. D. 1924.

FRANK S. DIETRICH,
Judge.

Endorsed, Filed December 11, 1924.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause)

PETITION FOR WRIT OF ERROR.

Comes now the defendant W. G. Critzer, defendant herein, and respectfully shows: That heretofore and on December 9th, 1924, this Court entered sentence and judgment against the defendant, W. G. Critzer, in which judgment and proceedings had hereunto in this cause, certain errors were committed to the prejudice of the defendant, all of which will appear more in detail from the assignment of errors, which is filed with this petition.

WHEREFORE, the said defendant, W. G. Critzer, prays that a writ of error may issue in his behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors complained of, and that this Court fix a bond to operate also as a supersedeas, and that a transcript of the record, proceedings and

papers in said cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

JOSEPH J. LAVIN,

Attorney for Defendant,

W. G. Critzer.

(Service admitted)

Endorsed, Filed, Dec. 11, 1924.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause)

ORDER ALLOWING WRIT OF ERROR.

On this 10th day of December, A. D., 1924, came the defendant W. G. Critzer, praying for the issuance of a writ of error upon his petition filed and presented herein, and filed therewith his assignment of errors, intended to be urged by him, and prayed for the fixing of a bond to be given to operate as a supersedeas and stay bond, and also that a record by way of transcript of all of the proceedings, papers and record upon which sentence and judgment herein was rendered and entered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and for such other and further proceedings may be had as may be proper in the premises:

In consideration WHEREOF, the Court does allow the said writ of error, and the bond for

such writ of error, and also to operate as a super-
sedeas, is fixed in the sum of One Thousand
(\$1,000.00) Dollars, and upon the defendant giving
such bond, all proceedings to enforce such sentence
and judgment shall be stayed until such writ of
error is determined.

Done in open court this 10th day of December,
A. D., 1924.

FRANK S. DIETRICH,
United States District Judge.

(Service admitted.)

Endorsed, Filed Dec. 11, 1924.

W. D. McREYNOLDS, Clerk

(Title of Court and Cause)

ASSIGNMENT OF ERRORS.

Comes now the above named defendant, W. G.
Critzler, and in connection with the defendant's writ
of errors and appeal herein, makes the following
assignments of error, committed during the above
entitled cause, and avers that such error is as
follows:

I.

The court erred in refusing to grant the Motion
of the defendant W. G. Critzler, made at the con-
clusion of the evidence of the Government, chal-
lenging the sufficiency of the evidence to justify
the same being submitted to the jury.

II.

The Court erred in overruling the defendant's Motion for judgment and acquittal, notwithstanding the verdict of the jury.

III.

The Court erred in overruling the defendant's motion for Arrest of Judgment.

IV.

The Court erred in overruling the defendant's Motion for New Trial.

V.

The Court erred in entering judgment upon the verdict of the jury and in sentencing the defendant upon the verdict of the jury.

VI.

The Court erred in overruling the defendant's Motion in Arrest of Judgment, for judgment and acquittal, and for New Trial, and in entering judgment upon the verdict, and in refusing to set said verdict aside upon the ground and for the reason; that the verdict of the jury, finding the defendant Hayden not guilty and the defendant Critzer guilty, was absurd, repugnant to the verdict of the jury, and inconsistent.

JOSEPH J. LAVIN,

Attorney for Defendant,

W. G. Critzer

(Service admitted)

Endorsed, Filed Dec. 11, 1924.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause)

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, that we, W. G. Critzer, the defendant above named, as principal, and the National Surety Company, a corporation (organized under the laws of the state of New York, and authorized to and transacting business as surety in the State of Washington), as surety, are jointly and severally held and firmly bound unto the United States of America in the penal sum of One Thousand (\$1000.00) Dollars (\$1000.00) for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, and administrators, successors, and assigns, jointly and severally, firmly by these presents.

Dated at Spokane, Washington, this 10th day of December, A. D., 1924.

The condition of the foregoing obligation is such that,

WHEREAS, the above bounden, W. G. Critzer, was heretofore charged by an information filed in the above entitled court with the offense of unlawfully possessing and transporting intoxicating liquor, and,

WHEREAS, heretofore, and on, to-wit: the 6th day of December, 1924, the said defendant, W. G. Critzer, was found guilty upon counts 1 and 2 of the information charging him with the unlawful

possession and transportation of intoxicating liquor, and,

WHEREAS, heretofore and on, to-wit: the 9th day of December, 1924, the above entitled court imposed judgment upon the verdict of the jury and sentenced the said defendant, W. G. Critzer, the principal herein, to pay a fine of Two Hundred and Fifty (\$250.00) Dollars upon the first count of the Information, and the further sum of Five Hundred (\$500.00) Dollars upon the second count of the said Information, a total of Seven Hundred and Fifty (\$750.00) Dollars; and that upon failure to pay said fine, he be confined in the county jail of Kootenai County, Idaho, and,

WHEREAS, the above bounden has petitioned for, and a Writ of Error has been allowed, and upon said Writ of Error he has been required to furnish a bond in the sum of One Thousand (\$1000.00) Dollars, conditioned that he shall pay said sum of Seven Hundred and Fifty (\$750.00) Dollars on the determination of the proceedings on the Writ of Error, or upon failing to do so, that he shall surrender himself or be surrendered to the sheriff of Kootenai County, Idaho to abide by and obey the order and judgment of said court.

NOW THEREFORE, if the said W. G. Critzer, said defendant herein, upon whose application a Writ of Error has been allowed, shall be and appear in the District Court of the United States,

the District of Idaho, Northern Division, upon the determination of said proceedings on said Writ of Error, in the event said Judgment be affirmed, and shall, upon the determination thereof, pay said fine of Seven Hundred and Fifty (\$750.00) Dollars, and shall fully satisfy and perform any and all orders, judgments, or mandates that may be entered in said cause, then this obligation to be void, otherwise to be and remain in full force and effect.

W. G. CRITZER,

By Joseph J. Lavin,

His Attorney.

NATIONAL SURETY COM-
PANY, a corporation,

By Arthur Oppenheimer,

Resident Vice President and
S. A. Mitchell, Resident As-
sistant Secretary.

(CORPORATE SEAL)

I hereby approve the above Bond.

FRANK S. DIETRICH,

United States District Judge.

Endorsed, Filed December 11, 1924.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause)

WRIT OF ERROR.

The President of the United States to the Honorable Judge of the District Court of the United States for the District of Idaho, Northern Division.
GREETING:

Because of the records and proceedings, as also in the rendition of the judgment and sentence on a plea, which is in the said District Court before you, or some of you, between the United States or America, plaintiff, and the defendant, W. G. Critzer, above named, manifest error hath happened to the great damage of the said defendant W. G. Critzer, as by his complaint appears, and it being fit and proper that the error, if any hath happened, shall be duly corrected, and full and speedy justice done to the party aforesaid in this behalf duly command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the records and proceedings, aforesaid, with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, together with this writ, so that you may have the same at the city of San Francisco, in the State of California, within thirty days from the date of this writ in the said Circuit Court of Appeals, to be then and there held, that the records and proceedings aforesaid, being inspected, this said Circuit Court of Appeals may

cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 10th day of December, A. D., 1924.

W. D. McREYNOLDS,
Clerk of the United States
District Court for the Dis-
trict of IDAHO, NORTH-
ERN DIVISION.

(SEAL)

(Service admitted)

Endorsed, Filed Dec. 11, 1925.

W. D. McREYNOLDS.

(Title of Court and Cause)

CITATION ON WRIT OF ERROR.

The President of the United States, to the United States of America, and to Messrs. E. G. Davis and William H. Langroise, Your attorneys:

GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of Cali-

fornia, within thirty days from the date of this writ, pursuant to a writ of error, regularly issued, and which is on file in the office of the clerk of the District Court of the United States, for the District of Idaho, Northern Division, in an action pending in said court, wherein W. G. Critzer is plaintiff in error (defendant in the lower court), and the United States of America is defendant in error (plaintiff in the lower court), and to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESSS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States of America, this 10th day of December, A. D., 1924.

FRANK S. DIETRICH,
U. S. District Judge.

(SEAL)

Attest: W. D. McREYNOLDS,
Clerk of said Court.

Copy received 12-11-24.

JAMES F. AILSHIE, Jr.,
Asst. U. S. Attorney.

Endorsed, Filed December 11, 1924.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause)

PRAECIPE.

TO THE HONORABLE W. D. McREYNOLDS,
Clerk of the above entitled court:

You will please prepare, certify and transmit to the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, holding terms at San Francisco, California, and include therein the following papers as a part of the record in the above entitled cause, the same to be printed by said clerk of said Circuit Court of Appeals in the ordinary and usual method.

1. Information or Indictment.
2. Bill of Exceptions.
3. Verdict of Jury.
4. Motion in arrest of Judgment, and Motion for New Trial.
5. Order overruling and denying Motion in Arrest of Judgment and for New Trial.
6. Judgment and Sentence.
7. Petition for Writ of Error.
8. Order allowing Writ of Error.
9. Citation on Writ of Error.
10. Bail Bond in Error. (Included in Bond on Writ of Error.)
11. Assignment of Errors.
12. Order granting extension of time for filing proposed Bill of Exceptions and fixing supersedeas bond. (Included in No. 8).

13. Bond on Writ of Error.
14. Writ of Error.
15. Certificate of Judge to Bill of Exceptions.
16. Certificate of Clerk of the United States District Court to Transcript of Record.
17. Names and addresses of attorneys of record.
18. Order Extending Time for Filing proposed Bill of Exceptions from January 9 to January 19, 1925.
19. Journal entries of record on day of trial.
JOSEPH J. LAVIN,
Attorney for Defendant,
W. G. Critzer.

Endorsed, Filed January 16, 1925.

W. D. McREYNOLDS, Clerk.

By M. FRANKLIN, Deputy.

(Title of Court and Cause)

CLERK'S CERTIFICATE.

I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 55, inclusive, to be full, true and correct copies of the pleadings and proceedings in the above entitled cause, and that the same together constitute the transcript of the record herein upon Writ of Error to the United States

Circuit Court of Appeals for the Ninth Circuit, as requested by the praecipe filed herein.

I further certify that the cost of the record herein amounts to the sum of \$70.25, and that the same has been paid by the plaintiff in Error.

Witness my hand and the seal of said Court this 13 day of April, 1925.

(SEAL)

W. D. McREYNOLDS, Clerk.

